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C O N F I D E N T I A L SECTION 01 OF 02 MANILA 003580

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E.O. 12958: DECL: 10/31/2017  
TAGS: [PREL](#) [MARR](#) [PTER](#) [RP](#) [AS](#)  
SUBJECT: THE NEW AUSTRALIAN/PHILIPPINES STATUS OF FORCES  
AGREEMENT: POSSIBLE IMPLICATIONS FOR THE UNITED STATES

REF: MANILA 03166

Classified By: Ambassador Kristie A. Kenney, reasons 1.4 (b) and (d)

¶1. (C) SUMMARY: Post is tracking progress on the Philippine-Australian Visiting Forces Agreement, which has been passed by the Australian Parliament and awaits approval by the Philippine Senate. While the agreement will facilitate the Australian military's important anti-terrorism and training assistance here, it also could rekindle debate over our own Visiting Forces Agreement with the Philippines, particularly the treatment of armed forces members accused of committing crimes. Under the Australian version, accused soldiers from either country could be detained by national authorities even before formal charges are proffered. In contrast, the U.S.- Philippine agreement allows both sides to retain custody of service members until all legal avenues are exhausted -- as with U.S. Marine Lance Corporal Daniel J. Smith, who remains in custody at the Embassy while the Appeals Court considers his appeal of a rape conviction. With a decision on Smith's appeal due sometime around the New Year, and the Australian Visiting Forces Agreement likely to be considered by the Philippine Senate soon thereafter, post is prepared to respond to any media and political calls to revisit our Visiting Forces Agreement with the Philippines.  
END SUMMARY.

¶2. (C) On October 30, the Australian Embassy told poloff that the Australian Parliament passed the Australian-Philippine Status of Visiting Forces Agreement in September. Both Australian and Philippine government sources confirmed President Arroyo has forwarded it to the Philippine Senate for consideration, although it has yet to be taken up by the Foreign Affairs Committee. The agreement will make it easier for the Australian military to expand its array of training programs in the Philippines, and Australian counterparts conveyed their optimism that the agreement will lead to increased bilateral cooperation between the Philippines and Australia, specifically on counterterrorism and security issues.

¶3. (C) While the Australian agreement and the U.S.-Philippine Visiting Forces Agreement are similar in some aspects, there are significant differences between them, most notably the issue of custody of military personnel accused of crimes in the host countries. The Australian agreement grants the host nation the right to maintain custody of visiting forces personnel accused in criminal cases during all phases of the criminal process -- investigation, trial, and post-conviction -- for acts committed outside official duties. Privately, Australian contacts told the Embassy that there are substantially more Filipino military in Australia for longer periods of time than Australian military in the Philippines. Consequently, the Australians believe there is a potential for more criminal conduct by Filipino military

personnel in Australia rather than the reverse.

¶4. (C) Under the U.S.-Philippine agreement, U.S. military authorities to retain custody over U.S. military personnel in the Philippines until the conclusion of all legal proceedings. This custody issue became a point of contention between the USG and the Philippines during the rape trial of U.S. Marine Lance Corporal Daniel J. Smith, who was found guilty by a Philippine judge in December 2006 and sentenced to a maximum of 40 years in prison (reftel). The Smith trial was the single most reported story in the Philippine press in ¶2006. At the time, senior Philippine government and congressional leaders raised the possibility of renegotiating the custody provisions of the U.S. agreement or clarifying custody language through an exchange of diplomatic notes. The Embassy persuaded senior government officials that any discussion regarding renegotiating or clarifying provisions in the agreement would be premature until the conclusion of judicial proceedings in the Smith trial. Smith's conviction is on appeal, with a decision expected before January 3, ¶2008. A further appeal to the Philippine Supreme Court could follow.

¶5. (C) Although the media and political circles have yet to take any significant notice of the Philippine government's consideration of the Australian agreement or draw any link to the U.S.-Philippine arrangement, the convergence of a decision in the Smith trial with impending Senate debate on the Australian agreement could rekindle the Philippine public's interest in the U.S. Visting Forces Agreement. Such a scenario would likely lead to a call by public activists and government officials to renegotiate the agreement.

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Should that occur, the Embassy is prepared to implement a broad public and political affairs strategy to deflect criticism of the agreement and promote the efficacy of the current status quo.

KENNEY